

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601
TELEPHONE: (502) 573 - 0316
FAX: (502) 573-0344

COMMISSIONERS
JOE F. CHILDERS, CHAIR
WILLIAM D. DONAN
STEPHEN A. SANDERS

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JULY 8, 2010: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Joe F. Childers, Commissioner William D Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Russell and Richardson who were representing the Office of Mine Safety and Licensing. Amy Denham was present from OMSL. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New. Timothy Pennington, Freddie Dixon, and Jimmy Rouse from OMSL attended to observe.
- ❑ The **minutes** for the meeting on **6/10/10** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

- **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

 - 08-MSRC-233 Timothy M. Bailey, 09-MSRC-052 Stanley Baker, Jr., 09-MSRC-215 Bradley Wireman, 09-MSRC-261 David Maggard, 09-MSRC-263 Herman D. Grubbs and 10-MSRC-004 Waylon C. Mayhew were each called. These miners did not appear or participate and no one on anyone's behalf filed any response. Thus OMSL moved for **permanent revocation** as to each based upon noncompliance with either the required submittals, drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
 - The Commission called 09-MSRC-176 Stephen R. Varney and upon motion by counsel for OMSL this matter was held in abeyance with the terms of the Settlement Agreement **extending the probationary and testing period** for the length of his **incarceration**. So moved and after a second this was ratified by the Chair on a unanimous vote.
 - At the call of 09-MSRC-146 Glen T. Booth the Commission was informed by counsel for OMSL that this matter was resolved and moved to have it **withdrawn**. So moved and after a second this was ratified by the Chair on a unanimous vote.
 - 09-MSRC-011 Keith Adams, 09-MSRC-134 James Travis Gay and 09-MSRC-232 Joshua Dan Roberts were called and gave proof of extenuating circumstances and other reasons to allow entry of an **Amended Settlement Agreement** for enhanced testing to insure future compliance and rehabilitation. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

 - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 10-MSRC-090 Brian S. Shepherd, 10-MSRC-092 Jayson Gilland, 10-MSRC-109 Charles Todd Compton, 10-MSRC-110 Blake A. Cabbage and 10-MSRC-115 Aaron Fritz were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement**

to resolve the allegations. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.

- 10-MSRC-107 Kenneth A. Conley requested a continuance. OMSL did not oppose the motion for **continuance**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was ratified by the Chair.
- 08-MSRC-201 Ronnie Slone and 10-MSRC-084 James Ray Maggard were called but failed to appear or contest and no one appeared on anyone's behalf thus OMSL moved for **revocation**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-088 Danny H. Stewart was called and no one appeared, thus OMSL moved for a **show cause** order. A motion was made to grant the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 10-MSRC-104 Billy Sturgill was called and did not appear or participate and no one appeared on his behalf. OMSL moved for a **revocation**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for Motions to Modify prior Orders:

- 10-MSRC-055 Jerry D. Elliot appeared. He agreed to provide proof of prescriptions and if that condition was met OMSL agreed to reinstate. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order. As an addendum, those prescriptions were not provided by the time of this writing and Elliot remains revoked as previous.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

- 09-MSRC-239 Mills, Castle & Wells and 10-MSRC-020 Alvin Noble, and D & D Mining, Inc., were called upon Motions for Defaults. After discussion these were **continued** to August 12 upon motion by OMSL. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-083 Mock, was called upon a Motion for Default, however counsel for Mock failed to appear. The Commission Sua Sponte determined to set this matter for a **Pre-trial** for all parties to attend at the August 12, 2010, meeting and for Mock to **Show Cause** as to why the Default should not be entered for failure to timely file an Answer. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-087 Randall E. Miller, was called upon Motion for **Default** and after good cause was shown, Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

Petitions for an Order filed by OMSL in roof control cases:

10-MSRC-121 Sapphire Coal Company was called, and the Chair, Joe Childers recused citing a conflict. The matter was presented in the manner of a default with Sapphire admitting and OMSL requesting an Order for the penalty. Commissioner Sanders so moved, this was seconded as appropriate and Commissioner Donan signed the Order.

The 1:00 p.m. Docket for “traditional” type cases:

- 10-MSRC-008 Kermit Hall & Double “A” Mining, Inc., and 10-MSRC-019 Mullins, Johnson, Slone & Shorty Enterprise, Inc., were called upon Motions for Default. The Commission determined that testimony in regard to each was necessary and Sua Sponte continued

these matters to August 12. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

Old Business

❑ Ratification of Final Order:

None scheduled for this meeting.

❑ Administrative Hearings Update;

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday August 12, 2010, and the possibility of one or more traditional type hearings.

❑ Status Report & Abeyances;

None submitted for this meeting.

❑ Appeals

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

❑ Office & Administrative;

- ❑ The General Counsel advised that the **mileage** is remains forty two (42) cents per mile.

❑ Training

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in **June 2011** at the KY History Center.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.

❑ **Probable Cause Determinations**

- 10-MSRC-122 Terry L. Newsome & Rodney L. Coleman and 10-MSRC-123 Carlos Combs, Terry Dishner & Cumberland River Coal Co., were each presented for a Probable Cause Determination. Commissioner Donan made a motion to **grant** as to each, which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday August 12, 2010**.
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday August 12, 2010. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:


Chair Hon. Joe F. Childers
Mine Safety Review Commission

8-12-10
Date